in court.[16] Legal suit-money was a practical equity. This fundamental idea courts have variously phrased.[17] The wife has been denominated an "agent of necessity" to bind her husband; [18] the suit-money has been called a "necessary."[19] Such phraseology has misled American courts; [20] and, blinded by words, they have failed really to conceive the problem. Yet the answer to it seems self-evident when stated. The husband owes the wife a duty of support, and this duty, which exists till death, mortal or legal, parts them, perforce involves furnishing the sinews for legal defense.

That this is the true basis of the doctrine is made abundantly clear in view of the effect of modern married women legislation.[21] This has made woman, generally speaking, man's legal equal. She can contract, hold and convey all classes of property, sue and be sued in her own name. But she is not man's actual equal, because there is no mutual duty of support.[22] As regards that duty, in the nature of things, the child-bearer can never be on an equality with the wage-earner. Unless we are to say that the state shall pay the expense of defending the penniless married woman [23] — and this step, because of practical difficulties,[24] few are ready to take — it must be that the English doctrine remains sound and just. The duty to support involves the duty to see the marriage relation through to the very end, however bitter.

RECENT CASES

APPEAL AND ERROR — ACTIONS AGAINST DEFENDANTS IN THE ALTERNATIVE — DISMISSAL OF ACTION AGAINST ONE ALTERNATE DEFENDANT. — The plaintiff, injured in a collision of two cars, sued the proprietors of both cars jointly and in the alternative. He produced evidence of negligence of one defendant, but no evidence, except the fact of the collision, of the second defendant's negligence. At the close of the plaintiff's evidence the second defendant moved for judgment, and the motion was granted. The remaining

[16] See 2 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 976; D'Aguilar *v.* D'Aguilar, 1 Hag. Ec. 773, 787 (1794). For another practical reason see SCHOULER, DOMESTIC RELATIONS, 5 ed., § 61.

[17] See SCHOULER, DOMESTIC RELATIONS, 5 ed., § 70.

[18] See CENTURY OF LAW REFORM, 368–369.

[19] Conant *v.* Burnham, 133 Mass. 503 (1882); McCurley *v.* Stockbridge, 62 Md. 422. See SPEER, LAW OF MARITAL RIGHTS IN TEXAS, 2 ed., § 560; Wilson *v.* Ford, 3 Exch. 63, 67 (1868), *per* Channell, B.

[20] There can be no agency to terminate the agency relation. Shelton *v.* Pendleton, 18 Conn. 417 (1847). The suit-money is not a necessary. Warner *v.* Heiden, 28 Wis. 517 (1871); Dow *v.* Eyster, 79 Ill. 254 (1875); Yeiser *v.* Lowe, 50 Neb. 310, 69 N. W. 847 (1897).

[21] A typical example of this legislation is the MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., c. 75). For a clear exposition of "the revolution" effected by such legislation in the law, see CENTURY OF LAW REFORM, 354–378.

[22] Except possibly in Iowa! Barnes *v.* Barnes, 59 Iowa, 456 (1882).

[23] This is the procedure in Illinois. See 1917 ILL. STAT., c. 40, § 14.

[24] The free counsel assigned to the destitute in criminal cases has not proved in practice a success, because of the inferior class of attorneys available. Suggestions have been made that the proper solution is for the state to bear the expense of *all* litigation. See 10 HARV. L. REV. 242; "Lawyers' Bills—Who Should Pay Them?" 12 LAW. Q. REV. 368.

defendant then introduced evidence proving that the second defendant was, and that he was not, negligent. A rule of court allows defendants to be sued in the alternative. (COUNTY COURT RULES, Order III, rule 5.) *Held*, that a new trial be granted. *Hummerstone* v. *Leary*, [1921] 2 K. B. 664.

The common-law rule that only parties who have a unity of interest may be joined as defendants still exists in the majority of American jurisdictions. See *Casey Pure Milk Co.* v. *Booth Fisheries Co.*, 124 Minn. 117, 144 N. W. 450; *Brown* v. *Ill. Central R. R.*, 100 Ky. 525, 38 S. W. 862. In such jurisdictions, if the plaintiff, suing several defendants jointly, fails to make out a *prima facie* case against one, the action against such defendant may properly be dismissed at the conclusion of the plaintiff's evidence. *Potomac Elec. Power Co.* v. *Hemler*, 47 App. D. C. 34. A few states, however, have adopted the English practice of allowing defendants to be sued in the alternative. 1919 WISC. STAT., § 2603; 1912 N. J. PRACTICE ACT, § 6, N. J. COMP. STAT., FIRST SUPP., p. 1204, § 95; 1909 R. I. GEN. LAWS, c. 283, § 20; 1920 N. Y. CIVIL PRACTICE ACT, § 211; CONN. RULES OF PRACTICE, c. 1, § 3, 58 Conn. 561, 20 Atl. v. Where such practice prevails, the plaintiff makes out a *prima facie* case against all defendants joined in the alternative by evidence that one of them is liable, without specifying which one. See ODGERS, PLEADING AND PRACTICE, 8 ed., 30. It should make no difference that the plaintiff goes further, as in the principal case, and gives evidence tending to prove which one of the defendants is liable. In allowing the defendants to be sued in the alternative, it is recognized that their interests may be adverse. See *Bennets & Co.* v. *McIlwraith & Co.*, [1896] 2 Q. B. 464; *Crouse* v. *Perth Amboy Publ. Co.*, 85 N. J. L. 476, 89 Atl. 1003. It follows that the case against any one defendant is not completed until all the evidence, not only of the plaintiff but also of the other defendants, is produced. See 46 L. J. 746.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — LIABILITY FOR CRIMINAL ACTS OF THIRD PERSONS — PROXIMATE CAUSE. — The plaintiff, a girl of eighteen, was carried seven-tenths of a mile past her station by the defendant railroad, shortly before twilight. She got off the train in the open country, and it was necessary, in walking to her station, to pass a notorious "hoboes' hollow." On her way she was twice raped. In an action for personal injuries, she recovered a verdict and judgment. *Held*, that the judgment be reversed and the cause remanded, to determine whether the plaintiff left the train voluntarily; if she did not, judgment to be entered for the plaintiff. *Hines* v. *Garrett*, 108 S. E. 690 (Va.).

The defendant carrier owed the plaintiff a duty to use reasonable care to prevent injury growing out of their relationship. *Pugh* v. *Washington Ry. & Electric Co.*, 113 Atl. 732 (Md.); *McKellar* v. *Yellow Cab Co.*, 181 N. W. 348 (Minn.). It may be argued that the defendant, having carried the plaintiff beyond her station, owed her a duty not to let her get off without warning her of the danger of the place, even if she got off voluntarily. If the defendant put her off, its action may well be held a violation of its duty to discharge passengers only at reasonably safe places. *Gott* v. *Kansas City Rys. Co.*, 222 S. W. 827 (Mo.); *Louisville & N. R. R. Co.* v. *Roney*, 127 S. W. 158 (Ky.); *Terre Haute & Ind. R. R. Co.* v. *Buck*. 96 Ind. 346. Assuming a violation of duty, the court considered proximate causation established. Such a criminal assault as occurred was risked by the situation created by the defendant. The conclusion on causation is sound in principle, though inconsistent with authority. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 657. See 32 HARV. L. REV. 293. *Cf. Carter* v. *Atlantic Coast Line R. R. Co.*, 109 S. C. 119, 95 S. E. 357; *Andrews* v. *Kinsel*, 114 Ga. 390, 40 S. E. 300; *Sira* v. *Wabash R. R. Co.*, 115 Mo. 127, 21 S. W. 905. In case the proposed view of causation be rejected, it may still be argued, as the